

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JOHN TRIBBITT,)	
)	
Movant,)	
)	
v.)	No. 4:08CV979 RWS
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

This matter is before the Court on movant’s motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. The motion will be summarily denied.

Pursuant to Rule 4 of the Rules Governing § 2255 Proceedings, the Court is required to conduct an initial review of the motion. Upon review, the Court is required to summarily dismiss the motion “[i]f it plainly appears from the motion . . . that the moving party is not entitled to relief . . .” Rule 4 of the Rules Governing § 2255 Proceedings.

On October 17, 2003, movant pled guilty to possession with the intent to distribute cocaine base. See 21 U.S.C. § 841(a)(1). On January 9, 2004, this Court sentenced movant to a seventy-month term of imprisonment and a four-year term of supervised release. Movant did not file a notice of appeal, nor did he timely file a motion pursuant to § 2255. Movant did, however, file a motion to reduce his sentence on January 14, 2008 pursuant to 18 U.S.C. § 3582(c), relating to the retroactive

amendment to the crack cocaine guidelines. Movant's motion was granted on February 29, 2008, and his sentence was thereby reduced to time served as of March 10, 2008. Movant's supervised release began upon his release from incarceration.

Movant now seeks to vacate the supervised release portion of the judgment on the basis that it is "unconstitutional" and in "violation of double jeopardy."


First, the motion is time-barred because it has been filed well outside of § 2255's one year statute of limitations. 28 U.S.C. § 2255. Second, even if the motion had been timely filed, it would be summarily denied because movant's arguments are patently frivolous. As a result, the motion shall be denied.

Additionally, because movant has failed to make a substantial showing of the denial of a constitutional right, the Court will not issue a Certificate of Appealability. 28 U.S.C. § 2253.

Accordingly,

IT IS HEREBY ORDERED that movant's motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255 is **DENIED**.

Dated this 17th day of July, 2008.



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE